S.B. CIVIL WRIT PETITION NO.6346/2007.

Surjeet Singh
Vs.
Addl.District and Sessions Judge and ors.

Date of Order : 22/8/2007.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri Ravi Chirania for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the impugned-order dated 31/5/2007 whereby in his appeal filed against the decree of ejectment, the learned First Appellate Court has fixed Rs.2000/- as *mesne-profit* payable to the landlord.

Learned counsel for the petitioner argued that no evidence is available on record so as to arrive at the conclusion that as per prevalent market rate, Rs.2000/- per month could be rent for the shop in question. The learned First Appellate Court had no justification in assuming this to be the prevalent market rate. It was argued that the order passed by the learned First Appellate Court suffers from non-application of mind inasmuch as, unsustainable in law.

Having heard learned counsel for the petitioner and perusing the material on record, I find that the learned First Appellate Court has taken into consideration the fact that rented premises were let out to the petitioner 30 years ago and that it was being used for commercial purposes. Learned First appellate Court has safeguarded interest of the petitioner by directing that if appeal is eventually decided in favour of the petitioner, the amount so deposited shall be liable to be adjusted accordingly. While passing the impugned-order, the learned First appellate Court has referred to the judgment of the Hon'ble Court in **Atma Ram Properties (Pvt.) Ltd. Vs. M/s.Federal Motor Pvt.Ltd. : 2005(1) W.L.C. (SC) Civil 340** wherein it was held by the Hon'ble Supreme Court that once decree of ejectment is passed, relationship of tenant and landlord stands snapped and appropriate order for fixation of *mesne-profit* in accordance with the provisions of Order 41 Rule 5 CPC can be passed by the appellate court.

In the facts of the case, I do not find that the impugned-order suffers from any error apparent on the face of record so as to justify interference of this court.

Accordingly, the writ petition being devoid of merit is dismissed in limine.

**(MOHAMMAD RAFIQ), J.**

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